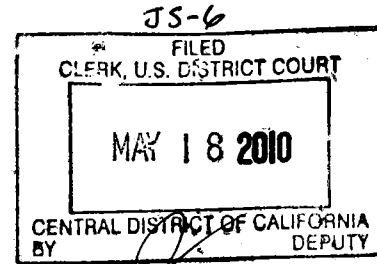


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8
9



10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

13 MERCURY INSURANCE SERVICES,
14 LLC, a California limited liability
company,

15 Plaintiff,

16 v.

17 MERCURY COLLISION CENTER,
18 INC., a California corporation, and
19 DOES 1 through 10, inclusive,

20 Defendants.
21

Case No. CV10-0144 CBM (AJWx)

STIPULATED JUDGMENT

22 IT IS HEREBY STIPULATED by and between plaintiff Mercury Insurance
23 Services, LLC, a California limited liability company ("Mercury Insurance"), and
24 Defendant Mercury Collision Center, Inc., a California corporation ("Defendant"),
25 that a Judgment shall be entered to fully and finally dispose of this civil action and
26 that the Judgment be as follows:

27 WHEREAS, on January 8, 2010, Mercury Insurance filed its Complaint in
28 this civil action against Defendant, which was served on Defendant on January 27,

1 2010;

2 WHEREAS, in the Complaint, Mercury Insurance alleged that it is the owner
3 of the following registered and/or common law trademarks and service marks
4 (collectively “the MERCURY Marks”):

5 a. The mark MERCURY INSURANCE COMPANY, which is the
6 subject of U.S. Trademark Reg. No. 3,273,138, for insurance services, namely
7 insurance underwriting services in the field of property and casualty insurance; and
8 insurance agencies;

9 b. The mark MERCURY INDEMNITY CO., which is the subject
10 of U.S. Trademark Reg. No. 2,939,082, for insurance services, namely insurance
11 underwriting services in the field of property and casualty insurance; and insurance
12 agencies;

13 c. The mark MERCURY INSURANCE GROUP, which is the
14 subject of U.S. Trademark Reg. No. 3,273,137, for insurance services, namely
15 insurance underwriting services in the field of property and casualty insurance; and
16 insurance agencies;

17 d. The mark MERCURY NATIONAL INSURANCE COMPANY,
18 which is the subject of U.S. Trademark Reg. No. 3,550,527, for insurance services,
19 namely, insurance underwriting services in the field of property and casualty
20 insurance; and insurance agencies;

21 e. MERCURY CASUALTY COMPANY, which is the subject of
22 U.S. Trademark Reg. No. 3,273,140, for insurance services, namely insurance
23 underwriting services in the field of property and casualty insurance; and insurance
24 agencies;

25 f. The mark MERCURY INSURANCE GROUP & Design, which
26 is the subject of U.S. Trademark Reg. No. 2,827,104, for insurance services,
27 namely insurance underwriting services and insurance agency services in the field
28 of property and casualty insurance, and which includes the following design

1 element:



2
3
4 g. The M Design, which is the subject of U.S. Trademark Reg. No.
5 2,785,829, for insurance services, namely insurance underwriting services and
6 insurance agency services in the field of property and casualty insurance, and which
7 consists of the following design element (which is referred to herein as the “M
8 Design”):



9
10
11 h. The common law marks MERCURY, MERCURY
12 INSURANCE COMPANY, MERCURY INDEMNITY CO., MERCURY
13 INSURANCE GROUP, MERCURY NATIONAL INSURANCE COMPANY,
14 MERCURY CASUALTY COMPANY, MERCURY INSURANCE GROUP &
15 Design, and the M Design as used in the commercial field of insurance services;
16 and

17 i. The color maroon as used in conjunction with any of the above
18 marks;

19 WHEREAS, in the Complaint, Mercury Insurance alleged that Defendant
20 was using one or more of the MERCURY Marks in interstate commerce in the field
21 of automotive repairs without the consent of Mercury Insurance;

22 WHEREAS, on March 12, 2010, the Clerk of Court entered a default against
23 Defendant for failure to file an Answer or other response to the Complaint;

24 WHEREAS, Mercury Insurance and Mercury Collision have entered into a
25 settlement agreement (the “Settlement Agreement”) with the mutual intention of
26 resolving all disputes between them which arise from the allegations of the
27 Complaint;
28

1 WHEREAS, this Court has jurisdiction over the subject matter of this
2 controversy pursuant to 15 U.S.C. § 1121(a) (Lanham Act jurisdiction), 28 U.S.C. §
3 1331 (federal question jurisdiction) and 28 U.S.C. § 1338(a) (trademark
4 jurisdiction);

5 THE COURT HEREBY ORDERS, ADJUDGES AND DECREES:

6 1. Default. For purposes of entering this Judgment, the default
7 entered by the Clerk of Court against Defendant is hereby set aside.

8 2. Permanent Injunction. Defendant and its past and present
9 officers, directors, servants, employees, partners, parent entities, subsidiaries,
10 affiliates, representatives, licensees, related companies, shareholders, successors,
11 assigns, attorneys and agents, and all persons in active concert or participation with
12 Defendant or with any of the foregoing, are hereby permanently enjoined from:

13 a. Promoting, importing, advertising, publicizing, distributing,
14 displaying, offering for sale or selling any good or service under the
15 mark MERCURY COLLISION CENTER or any of the MERCURY
16 Marks or the word MERCURY or the M Design, or any other mark,
17 name, symbol or logo which is likely to cause confusion or to cause
18 mistake or to deceive persons into the erroneous belief that any good
19 or service that Defendant caused to enter the stream of commerce is
20 sponsored, licensed or endorsed by Mercury Insurance, is authorized
21 by Mercury Insurance, or is connected or affiliated in some way with
22 or endorsed by Mercury Insurance;

23 b. Promoting, importing, advertising, publicizing, distributing,
24 displaying, offering for sale or selling any good or service under any
25 of the MERCURY Marks or any other mark, name, symbol or logo
26 that is a copy or colorable imitation of, which incorporates or which is
27 confusingly similar to any of the MERCURY Marks;

28 c. Offering, selling, promoting, displaying, advertising or

1 publicizing any goods or services under any of the MERCURY Marks
2 or any other design, mark, name, symbol or logo which is likely to
3 cause confusion or to cause mistake or to deceive persons into the
4 erroneous belief that Defendant's businesses, goods or services are
5 sponsored or endorsed or authorized by Mercury Insurance or are
6 connected or affiliated in some way with or endorsed by Mercury
7 Insurance;

8 d. Falsely implying Mercury Insurance's endorsement of
9 Defendant's commercial activities or goods or services;

10 e. Engaging in any act or series of acts which, either alone or in
11 combination, constitutes unfair competition with Mercury Insurance
12 and/or otherwise interfering with or injuring any of the MERCURY
13 Marks or the goodwill associated therewith;

14 f. Engaging in any act which dilutes or is likely to dilute the
15 distinctiveness of any of the MERCURY Marks or which injures or is
16 likely to injure Mercury Insurance's business reputation;

17 g. Representing or implying that Defendant is in any way
18 sponsored by, affiliated with, endorsed by or licensed by Mercury
19 Insurance;

20 h. Assisting, inducing, aiding or abetting any person or business
21 entity in engaging in or performing any of the activities referred to in
22 sub-paragraphs (a) to (g), inclusive, above.

23 3. Name Change. Within ten court days of entry of this
24 Judgment, to the extent not already completed, Defendant shall change its
25 corporate and/or business name and it, and/or its successor(s), shall operate and
26 hold itself out under a name which does not include the word MERCURY, the M
27 Design, the color maroon or any name, word, symbol, logo, color or combination
28 thereof which is confusingly similar to any of the MERCURY Marks.

1 4. Destruction of Infringing Articles. Within ten court days of
2 entry of this Judgment, and to the extent not already completed, Defendant shall:
3 (a) destroy all movable physical objects (including, without limitation, flyers,
4 newsletters, calendars or other promotional items) which incorporate the word
5 MERCURY or the M Design; (b) delete or alter all electronic media under its
6 control (including, without limitation, all web pages and metatags) so as to remove
7 all instances of the word MERCURY and/or of the M Design; and (c) destroy,
8 erase, repaint or alter all immovable physical objects (including, without
9 limitation, buildings with painted signage) so as to remove all uses of the word
10 MERCURY or the M Design.

11 5. Proof of Compliance. Within fifteen court days of entry of this
12 Judgment, Defendant shall serve upon Mercury Insurance a declaration under
13 penalty of perjury that it has complied with the terms of this Judgment, including
14 the destruction of infringing articles.

15 6. Attorneys' Fees and Costs. Each party shall bear its own
16 attorneys' fees and costs incurred in this civil action.

17 7. Violation of Judgment – Contempt of Court. In the event that
18 any part of this Judgment is violated by Defendant, or by any of its present or
19 former officers, directors, agents, servants, employees, shareholders, partners or
20 representatives, or by any person in active concert and participation with
21 Defendant that receives notice of this Judgment, Mercury Insurance may file and
22 serve a motion for contempt seeking damages, attorneys' fees and/or other
23 appropriate relief.

24 8. Violation of Judgment – Liquidated Damages. Mercury
25 Insurance and Defendant stipulate that it would be impracticable or extremely
26 difficult to determine the exact amount of monetary damages which Mercury
27 Insurance would suffer if Defendant violated any of its obligations memorialized
28 in this Judgment. Mercury Insurance and Defendant therefore stipulate that, in the

1 event that this Court (or other competent tribunal) finds that Defendant has
2 violated this Judgment, Defendant shall owe to Mercury Insurance liquidated
3 damages in the sum of Thirty-Five Thousand Dollars (US\$35,000) per discrete
4 violation. Mercury Insurance and Defendant stipulate that this amount of
5 liquidated damages is reasonable under the circumstances existing at the time that
6 this Judgment was submitted to the Court and at the time that the underlying
7 Settlement Agreement was made. In the event that Mercury Insurance seeks
8 monetary damages in recompense for one or more violations of this Judgment by
9 Defendant, the above-specified liquidated damages shall be Mercury Insurance's
10 exclusive method for obtaining and calculating monetary damages (which shall be
11 separate and apart from an award of attorneys' fees and/or costs).

12 9. Violation of Judgment -- Prevailing Party Fees and Costs. In
13 an action or proceeding based upon an allegation that a party has violated this
14 Judgment, the prevailing party shall be entitled to recover all of its reasonable
15 attorneys' fees, expert witness fees and other costs incurred in connection with the
16 action or proceeding. This paragraph shall not be construed to limit any party's
17 rights, remedies or procedural options.

18 10. Inducement. As a material inducement for Mercury
19 Insurance's assent to this Judgment, third party Angel Sanchez (a) hereby
20 acknowledges that he is the person who at all relevant times controlled Defendant
21 and (b) hereby agrees to be personally bound by all of the terms and conditions of
22 this Judgment which bind Defendant, including, without limitation, the permanent
23 injunction and the provision regarding liquidated damages for violation of this
24 Judgment.

25 11. No Admission of Liability. By stipulating to this Judgment,
26 Defendant does not admit liability for or the validity of any of Mercury
27 Insurance's claims; Defendant expressly denies all of Mercury Insurance's claims;
28

1 and this Judgment shall not be interpreted as a determination of unlawful conduct
2 by Defendant.

3 12. Strict Compliance. In order to satisfy this Judgment, Defendant
4 must strictly comply with all provisions of this Judgment, and substantial
5 compliance shall not be a defense by Defendant to a claim that Defendant has
6 failed to comply with an obligation under this Judgment.

7 13. Binding Effect. This Judgment shall be binding upon and inure
8 to the benefit of the parties and all successors, assigns, parent entities, subsidiaries,
9 officers, directors, shareholders, agents, affiliates, and all entities which are
10 "related companies" within the meaning of 15 U.S.C. § 1055, and on all persons
11 that receive notice of this Judgment.

12 14. Continuing Jurisdiction. This Court shall retain jurisdiction to
13 enforce this Judgment and the Settlement Agreement.

14 15. No Territorial Limit. This Judgment shall be enforceable
15 against Defendant for any acts that violate this Judgment that occur inside and/or
16 outside of the United States of America.

17 16. Bond. To the extent that this Court has previously ordered
18 Mercury Insurance to post a bond, the bond requirement is discharged.

19 17. Final Judgment. This Judgment shall be a final adjudication of
20 all claims alleged by Mercury Insurance in this civil action, and this Judgment is
21 not appealable.

22
23 IT IS SO ORDERED:

24
25
26 Dated: 5/18/10

27 
28 HON. CONSUELO B. MARSHALL
UNITED STATES DISTRICT COURT

1 *Approved as to content and form:*

2 MERCURY INSURANCE SERVICES, LLC
3 *Plaintiff*

4 By: 

Date: 4/20/2010

5 Name: Joseph B. Miller

6 Title: Corporate Counsel

7
8 MICHAEL COLLISION CENTER, INC.,
9 fka Mercury Collision Center, Inc.
10 *Defendant*

11 By: 

Date: 4/15/10

12 Name: _____

13 Title: _____

14
15 ANGEL SANCHEZ
16 *Third Party*

17
18 

Date: 4/15/10

19
20
21 *Approved as to form:*

22
23 MANATT, PHELPS & PHILLIPS, LLP

24 By: 

Date: 4/29/10

25 Jill M. Pietrini

26 Attorneys for Plaintiff

Mercury Insurance Services LLC